



## INTERIOR BOARD OF INDIAN APPEALS

Death Valley Timbi-Sha Shoshone Band v. Acting Sacramento Area Director,  
Bureau of Indian Affairs

18 IBIA 196 (03/16/1990)

Reconsideration denied:  
18 IBIA 313



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

DEATH VALLEY TIMBI-SHA SHOSHONE TRIBE

v.

SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-95-A

Decided March 16, 1990

Appeal from a decision denying an application for renewal of a Core Management grant.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Financial Matters: Financial Assistance

Decisions concerning whether a tribe's application for a Core Management grant should be funded are committed to the discretion of the Bureau of Indian Affairs. In reviewing such decisions, it is not the function of the Board of Indian Appeals to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Bureau of Indian Affairs: Administrative Appeals: Acts of Agents of the United States--Federal Employees and Officers: Authority to Bind Government

Unauthorized acts by an employee of the Bureau of Indian Affairs cannot serve as the basis for conferring rights not authorized by law.

APPEARANCES: Dorothy Alther, Esq., Bishop, California, for appellant; William Wirtz, Esq., Acting Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, Sacramento, California, for appellee.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Death Valley Timbi-Sha Shoshone Tribe seeks review of a July 27, 1989, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs (BIA; appellee), denying its application for renewal of Core Management Grant No. GTJ51007189. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant received a Core Management grant in the amount of \$49,511.92 for fiscal year 1988. In May 1989 appellant applied for a renewal of the grant in the amount of \$83,530 under the fiscal year 1989 program. Its request for fiscal year 1989 Core Management funds was one of 27 applications, seeking \$1,475,000 in funding, received by the Sacramento Area Office. The Area received \$368,000 for the fiscal year 1989 program.

Appellant's renewal application was reviewed by a Core Management review panel established to review and rate applications under the program. The application received a score of 59.625.

On July 7, 1989, the Superintendent, Central California Agency, BIA (Superintendent), informed appellant he would recommend that appellee disapprove appellant's grant application. Appellee accepted the Superintendent's recommendation, and on July 27, 1989, disapproved appellant's application. Appellee's disapproval letter stated:

As you may know, the Core Management Grant Program is not an entitlement program. The amount of funding available for this program has necessitated careful review of each tribal project because there are numerous tribes in this Area who have no other income or resources to fund basic core management staff. Successful performance on an initial grant by the tribe is a prerequisite to receipt of a renewal grant and the application should identify specific problems or needs and have developed a work statement which shows the potential for resolving problems or meeting the needs identified.

In evaluating performance on the previous Core Management Grant J51G1420M802, the need statement provided a discussion about the elimination of the problems of delinquency in making progress or financial status reports and failure to close out program grants or contracts which were no longer in operation. In that work statement a realistic plan was developed to assure that the Council would remain current in meeting the reporting requirements of all contracts and grants, however, no quarterly performance reports were submitted on that grant. In evaluating the performance of the Council in meeting the reporting requirements of other grants, we found that quarterly performance reports due on the Self-Determination Grant J51G14208C10 December 15, 1988 and March 15, 1989 extended to April 15, 1989 had not been received.

Although there was discussion in the narrative to the effect that the first year's grant goals were not obtained due to lack of management, financial accountability, internal strife, termination of staff and vacancy of office, there was no discussion about what caused the problems, the extent of the problems and how it affected the performance of the grant.

In addition, no discussion was provided as to the reason why the tribe continued to experience a problem in meeting the current reporting requirements of grant agreements when a Tribal Administrator has been employed for some time.

The work statement did not describe in detail what will be done to correct core management problems and the application did not describe how the Council would monitor progress in achieving the goals and objectives of the proposed grant program.

Therefore, in weighing the relative need of this project in relation to other projects, based on the information provided in the application and review of performance under the previous Core Management Grant, the application is disapproved.

On August 28, 1989, the Board received appellant's notice of appeal from this decision. Both appellant and appellee filed briefs.

#### Discussion and Conclusions

[1] The Board has previously established the parameters of its role in reviewing BIA decisions concerning whether a particular Core Management grant application should be funded. It has held that these decisions are committed to the discretion of BIA and that "[i]n reviewing such decisions it is not the Board's function to substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion." Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 51 (1989). This appeal will be considered under that standard.

The administrative record shows that appellant's grant renewal application was one of eleven renewal applications received by the Sacramento Area Office. 1/ Appellant's score of 59.625 placed it fifth out of the 11 renewal applicants. Appellant and one other renewal applicant, which had an even higher score than appellant, were not approved for renewal grants on the grounds that they did not meet the renewal criteria and were not in compliance with the previous fiscal year's grant reporting requirements. Four renewal applicants with scores lower than appellant's received fiscal year 1989 grants. It is thus apparent that appellant's score placed it high enough to receive a renewal grant, but the grant was disapproved on other grounds. 2/

---

1/ The remaining 16 applications sought new grants.

2/ Because appellant's score was high enough to receive a renewal grant, the Board declines to address appellant's arguments relating exclusively to appellee's evaluation of the renewal application. These arguments are: (1) the renewal application adequately discussed the cause, extent, and effect of appellant's administrative problems; (2) appellant did not discuss why it continued to have problems meeting grant reporting requirements because it

The critical issue in appellee's decision to disapprove appellant's fiscal year 1989 application was his finding that appellant failed to submit quarterly performance reports under its fiscal year 1988 grant. These reports are required by paragraph 2, page 4, of the 1988 grant:

PERFORMANCE REPORT - Shall be submitted within 15 days following the conclusion of each three month period (quarterly) of this grant. In addition, the Grantee shall submit a final report presenting the overall achievements obtained from the grant. In describing those achievements, consideration should be given to problems, delays or adverse conditions as well as favorable developments or events that in any way contributed to the final outcome. The final report must be submitted within 30 days following the completion of the grant period.

It is clear from the administrative record and the submissions of the parties that problems arose in appellant's implementation of its fiscal year 1988 grant. Those problems arose primarily from vacancies in the management positions funded under the grant and dissention within the tribe and tribal council, which resulted in no guidance being given to the Tribal Administrator. Because of such problems, appellant requested a waiver of the requirement to submit quarterly narrative reports.

Appellant further states that it was granted such a waiver. In support of this argument it submitted an unsigned document it alleges to be notes made by a BIA employee acknowledging the waiver. The document contains the marginal notation: "No narratives. Permission granted to waive since tribal ofc in disarray. Tr adm. trying to reconstruct." Appellant states that the waiver was granted and the note was written by the BIA Grant Officer to whom its Tribal Administrator had been referred.

Appellee challenges both the authenticity of this document and the authority of the BIA official allegedly involved to grant a waiver of the reporting requirements. Citing 25 CFR 278.26, appellee argues that a request for a waiver had to be submitted in writing and could be granted only by the Area Grants Officer. Section 278.26 states: "Day-to-day monitoring responsibility for approved individual tribal grants shall rest with Agency offices with guidance, support and assistance provided by Area offices. The Area Office shall have overall responsibility for the approval, administration, and evaluation of grants awarded under this subpart." <sup>3/</sup> Appellee further notes that paragraph 3, page 4, of the fiscal year 1988 grant states:

---

fn. 2 (continued)

is no longer experiencing such problems; and (3) appellee abused his discretion by failing to return appellant's grant application for revisions and to give greater weight to the review panel's comments and scores.

<sup>3/</sup> Appellee also cites 25 CFR 272.25 in support of this proposition. This regulation provides that the Area Office shall administer certain grants issued under the Indian Self-Determination and Education Assistance Act,

GRANT AMENDMENT - At any time during the performance period of this grant, events may occur which have significant impact upon the grant project or program. In such cases, the grantee shall immediately notify the Grants Administrator as soon as the following types of conditions become known:

A) Problems, delays, or adverse conditions which could materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals or prevent the attainment of project work units. This notification must be in writing and shall include a statement of the action taken or contemplated to resolve the situation and request, if desired, any Bureau assistance.

\* \* \* \* \*

C) If it becomes necessary, because of either favorable or unfavorable conditions, to change any of the terms and conditions (including the Grantee's application), the Grantee shall submit a Grant Amendment Proposal to the Grants Administrator. [Emphasis in original.]

Finally, appellee contends that even if a waiver had been properly granted, it would have been for a limited time which has since passed without submission of the reports. <sup>4/</sup>

[2] For the purposes of this decision, the Board will assume that the document appellant has submitted is authentic and the notes were written by the BIA official named by appellant. Appellant's request for waiver was, however, not submitted in writing and was not approved by the Area Office. Instead, its oral request was apparently granted by the Central California Agency 638 Program Specialist. Such action, taken without consulting with or even notifying the Area Grants Officer, who was the official authorized to take action under the circumstances present here, exceeded the authority of the Agency 638 Program Specialist. Although it sometimes appears to be a harsh rule, the Federal Government is not bound by the unauthorized or ultra vires actions of its employees. See, e.g., Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Martineau v. Billings Area Director, 16 IBIA 104, 112 (1988), and cases cited therein.

---

fn. 3 (continued)

25 U.S.C. § 450h (1982) ("638"). Core Management grants are issued pursuant to 25 U.S.C. § 13 (1982). Appellee does not cite any authority for applying the Self-Determination Act regulations in 25 CFR Part 272 to Core Management grants issued under 25 CFR Part 278.

<sup>4/</sup> Appellant stated that all delinquent narrative reports would be submitted. The fact that the reports are ultimately submitted does not excuse any failure to submit the information properly and timely. In a competitive grant program, BIA must evaluate applications as they are submitted, not as they may be supplemented on appeal after disapproval. Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989).

Under the circumstances of this case, appellee did not commit legal error in disapproving appellant's fiscal year 1989 Core Management grant renewal application on the grounds that appellant had failed to comply with the reporting requirements of its fiscal year 1988 grant. 5/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Sacramento Area Director's July 27, 1989, decision is affirmed.

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge

---

5/ Because of this disposition, the Board does not address appellant's contention that appellee misapplied the grant renewal requirements of 25 CFR 278.27.